

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Case No. 1:20-cv-00997-CCE-LPA**

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| SYLVESTER ALLEN, JR. <i>et al.</i> , | <i>Plaintiffs,</i> |
| v.                                   |                    |
| CITY OF GRAHAM, <i>et al.</i> ,      | <i>Defendants.</i> |

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| GREGORY DRUMWRIGHT, <i>et al.</i> ,   | <i>Plaintiffs,</i> |
| v.  |                    |
| TERRY JOHNSON, individually and in his<br>official capacity as Alamance County Sheriff, <i>et al.</i> , |                    |
|   | <i>Defendant</i>   |

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**CITY OF GRAHAM DEFENDANTS'  
MOTION TO DISMISS THE  
DRUMWRIGHT AND THE ALLEN  
COMPLAINTS [D. 24, 25]**

The City of Graham, its Chief of Police Mary Kristine Cole, Lieutenant Joaquin Velez and Officer Jonathan Franks hereby move pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(c) to dismiss all claims against them, individually and in their official capacities, as set forth in the complaints filed in this consolidated action at docket entries 24 and 25. The City of Graham also moves to dismiss all claims against it pursuant to Rules 12(b)(6) and 12(c).

Plaintiffs' federal civil rights claims fail to state actionable claims, are barred by qualified immunity, and are redundant where the claims are brought against the Graham individuals in their official capacities as well as against the City itself. Accordingly, the Court should dismiss against all Graham Defendants the

*Allen* Complaint D.24 First Cause of Action (Voting Rights Act 52 U.S.C. § 10307)  
*Allen* Complaint D.24 Second Cause of Action (First Amendment Retaliation 42 U.S.C. § 1983)  
*Allen* Complaint D.24 Third Cause of Action (Fourth Amendment Exc. Force 42 U.S.C. § 1983)  
*Allen* Complaint D.24 Fourth Cause of Action (Conspiracy 42 U.S.C. § 1985(3))  
*Drumwright* Complaint D.25 Count I (First Amendment 42 U.S.C. § 1983)  
*Drumwright* Complaint D.25 Count II (Fourth Amendment 42 U.S.C. § 1983)  
*Drumwright* Complaint D.25 Count III (Voting Rights Act 52 U.S.C. § 10307)  
*Drumwright* Complaint D.25 Count IV (Conspiracy 42 U.S.C. § 1985(3))

Plaintiffs claims brought under the North Carolina Constitution should be dismissed for failure to state a claim and because Plaintiffs have alternative remedies available that provide relief and access to the courts. Accordingly, the Court should dismiss

*Allen* Complaint D.24 Sixth Cause of Action (N.C. Constitution – Freedom of Speech/Assembly)  
*Drumwright* Complaint D.25 Count V (N.C. Constitution – Freedom of Speech)  
*Drumwright* Complaint D.25 Count VI (N.C. Constitution – Freedom of Assembly)

Plaintiffs claims brought pursuant to North Carolina common law should be dismissed for failure to state a claim and because Defendants are entitled to governmental immunity and to public officer immunity as pled. Accordingly, the Court should dismiss

*Allen* Complaint D.24 Fifth Cause of Action (Common Law Assault and Battery)  
*Drumwright* Complaint D.25 Count VII (Common Law Battery)

Plaintiffs Future Alamance, Justice 4 the Next Generation and Alamance Alliance for Justice should be dismissed for failing to comply with the statutory prerequisites for unincorporated associations to bring suit and requirement that they plead such conformity pursuant to N.C. Gen. Stat. § 1-69.1(a)(3). These Plaintiffs should also be dismissed from this proceeding for lack of standing.

RESPECTFULLY SUBMITTED, this the 12<sup>th</sup> Day of February 2021.

Envisage Law

By: /s/ Anthony J. Biller  
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### **CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day filed the foregoing **CITY OF GRAHAM DEFENDANTS' MOTION TO DISMISS THE DRUMWRIGHT AND THE ALLEN COMPLAINTS [D. 24, 25]** with the Clerk of Court using the CM/ECF system which will send notification to opposing counsel at the following:

|   |  |
|---|--|
| <p>Geraldine Sumter<br/><a href="mailto:gsumter@fergusonsumter.com">gsumter@fergusonsumter.com</a></p> <p>Anuja Diwakar Thatte<br/><a href="mailto:athatte@naacpldf.org">athatte@naacpldf.org</a></p> <p>Ashok Chandran<br/><a href="mailto:achandran@naacpldf.org">achandran@naacpldf.org</a></p> <p>Clarence W. Phillips<br/><a href="mailto:cphillips@cov.com">cphillips@cov.com</a></p> <p>Marianne E. Spencer<br/><a href="mailto:mspencer@cov.com">mspencer@cov.com</a></p> <p>Leah C. Aden<br/><a href="mailto:laden@naacpldf.org">laden@naacpldf.org</a></p> <p>Morgan E. Lewis<br/><a href="mailto:melewis@cov.com">melewis@cov.com</a></p> <p><i>Attorneys for Allen Plaintiffs</i></p> | <p>Elizabeth Haddix<br/><a href="mailto:ehaddix@lawyerscommittee.org">ehaddix@lawyerscommittee.org</a></p> <p>Jason L. Keith<br/><a href="mailto:Jasonk1906@yahoo.com">Jasonk1906@yahoo.com</a></p> <p>Kristi L. Graunke<br/><a href="mailto:kgraunke@acluofnc.org">kgraunke@acluofnc.org</a></p> <p>Daniel K. Siegel<br/><a href="mailto:dsiegel@acluofnc.org">dsiegel@acluofnc.org</a></p> <p>Jaclyn A. Maffetore<br/><a href="mailto:jmaffetore@acluofnc.org">jmaffetore@acluofnc.org</a></p> <p>Jennifer N. Nwachukwu<br/><a href="mailto:jnwachukwu@lawyerscommittee.org">jnwachukwu@lawyerscommittee.org</a></p> <p>Mark Dorosin<br/><a href="mailto:mdorosin@lawyerscommittee.org">mdorosin@lawyerscommittee.org</a></p> <p><i>Attorneys for Justice For the Next Generation Plaintiffs</i></p> |
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This the 12<sup>th</sup> Day of February 2021.

/s/ Anthony J. Biller

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